Cr.A. 995/95

(2)

XII-158/(Jail)
C.J.P.K.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 291 Name विक्टोर

Father's name सोमा

Residence सा॰ ताप्तासिल्ली, थाना-अस्ता जेल्ली 52 वर्ष

Sentenced to आजीवन on 20-4-95

Under section 302 I.P.C. by अपर सत्र न्यायालय जशपुर नगर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date of which copy received 20-4-95

3 Date on which Appeal sent 4-5-95

4 Whether the prisoner wishes to be represented or not Yes/No.

No. 291 Name विक्टोर @ सोमा

Continued in उप जेल Jail जशपुर नगर

No. 587 dated 4-5-95 19

Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

अधीक्षक,
Superintendent Central/District Sub-Jail

Date ... 's Office within time.
Date of re... to accompany
Memo of Ap... the Appeliate Court.
No. 2/cell/95 Dated 26-5-95 19

Forwarded to the अतिरिक्त सेशन जज एवं विशेष न्यायाधीश (अ.जा.ज.अ.अधि.) रायगढ़ along with 39/95 दिनांक 26/5/95 C.J.Magistrate

(बी. बी. बाजपेई)
मुख्य न्यायिक दंडाधिकारी
रायगढ़ (म. प्र.)

Date of receipt in Appliate Court 26/5/95

(P.T.O.)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(18)

मामला क्रमांक Cr.A.No. 995/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO
& HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 995 of 1995

Appellant : Victor

Vs.

Respondent : State of Madhya Pradesh

Shri Neeraj Mehta, learned counsel for the appellant.

Shri Sachin Singh Rajput, learned Dy. G.A. for the respondent/State.

ORAL JUDGMENT
(10.02.2006)

Dhirendra Mishra, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has challenged the legality and correctness of the judgment of conviction and order of sentence dated 20.04.1995 passed in Session Trial No. 39/95 whereby the learned Additional Sessions Judge, Jashpurnagar after holding the accused/appellant guilty for commission of murder of Swartis convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

आदेश पत्रक

मामला क्रमांक Cr.A.No. 995 सन् 95 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
2.	Case of the prosecution in brief is that on 26.12.1994 at 9.30 a.m. Gregory Ekka lodged a report in police out-post Aasta mentioning therein that on 25.12.1994 on the eve of Christmas festival when he was in his house, at about 8.00 p.m. accused Victor came there and said that he had killed his elder son Swartis after assaulting with knife. On receiving this information the villagers went to the house of deceased and found that he was lying with a wound over his chest from which blood was oozing and he succumbed to the injuries at about 10.00 p.m. After registering the crime the police proceeded for investigation and prepared inquest report Ex.P-9 after due notice to the witnesses. Thereafter dead body was sent for post mortem examination to Primary Health Centre, Manora. Dr.R.S.Paikra P.W.-3 conducted the post mortem examination on the body of the deceased and submitted the report P-7. The doctor has found stabbed wound over the right side of the chest of the deceased. According to the doctor cause of death of the deceased was excessive bleeding due to puncture in internal organ and death was homicidal in nature. During investigation, on the memorandum of the appellant P-2 blood stained knife was recovered vide Ex.P-3. Blood stained clothing of accused Victor was seized under P-4. Plain and blood stained soil was seized under P-5. Blood stained clothes of the deceased were seized under P-6. Weapon of the offence i.e. knife was sent for chemical examination and the examination report is P-8. The doctor opined that the injury could be caused by the said weapon. Spot map P-11 was prepared by Halka Patwari. Blood stained woolen sweater of the deceased was seized under P-14. The seized articles were sent for chemical examination to Forensic	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Science Laboratory under P-15. After completion of the investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Jashpurnagar who in turn committed the case to the Session Judge, Raigarh from where the trial Court received the case on transfer for trial.

3. The trial Court framed the charge under Section 302 of the IPC and the accused abjured his guilt and pleaded false implication in the case.

4. Prosecution in order to establish the charge against the accused has examined as many as nine witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which accused denied the circumstances appearing against him and stated that the deceased was assaulting him by knife, therefore in exercise of right of private defence he assaulted him and thus he is innocent.

5. Homicidal nature of death of Swartis is not is dispute.

6. To establish the involvement of accused/appellant the prosecution has examined P.W.-8 namely Pirsila Barba, wife of the deceased who saw the incident. She has stated in her evidence that on 25.12.94 at about 7.00 p.m. she along with the deceased had gone to a village and the deceased was returning after taking meals. She has stated that accused is her father in law. When she returned back, the house was locked and some dance programme was going on nearby. Her mother in law and father in law were present at the place where the dance programme was going on.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-4-	
	They went to the accused and demanded key of the house however, the accused did not give the key and at that moment her husband i.e. the deceased also reached there and on his demand also the accused did not give him key and said that he would hand over the key in front of the house. However on the way the accused caught hold of neck of her husband and stabbed him on his chest after taking out the knife from his waist. She caught hold of the deceased but she could not support him and both of them fell on the ground. Thereafter number of persons reached there. They entered their house and her husband died at 10.00 p.m. In the cross examination the defence has not been able to elicit anything. Statement of this witness is corroborated by P.W.-1 Gregory Ekka before whom the accused/appellant confessed that he assaulted his son Swartis by knife. P.W.-2 Silbester is the witness on the basis of whose memorandum knife used in the offence was seized. Statement of P.W.-8 Pirsila Barba is also corroborated by the evidence of P.W.-3 Dr. R. S. Paikra who after conducting the post mortem has found stab injury over the right side of chest of the deceased. Statement of P.W.-8 is also corroborated by promptly lodged FIR in which name of the accused/appellant has been mentioned. Thus, on the basis of evidence of this witness the involvement of the accused in the crime in question is established.	
7.	Learned counsel for the accused/appellant submits that it is a case of single blow and the blow was allegedly inflicted by the appellant without pre-meditation on the spur of moment and without any intention to cause	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

death of the deceased. He further submits that deceased and the accused are son and father and there was no motive for the appellant to commit the offence. In support of his submission learned counsel for the appellant has placed reliance on the judgment of Supreme Court in the matter of **Shivappa Buddappa Kolkar @ Buddappagol Vs. State of Karnataka & Others** reported in **2004 AIR SCW 5736** and submits that in case during quarrel the accused suddenly assaulted the deceased with axe resulting into his death the offence is committed without pre-meditation or pre-arranged plan to attack deceased. Though the accused could be imputed with the knowledge that injury inflicted by him was likely to cause death, intention cannot be attributed and the conviction can be altered to that of under Section 304-II of the IPC.

8. On the other hand learned counsel for the State supports the impugned judgment of the trial Court.

9. We have heard learned counsel for the parties and perused the evidence available on record.

10. Taking into consideration the manner in which the offence is committed and that the incident took place on the spur of moment without pre-meditation and the appellant gave a single blow with knife over the chest of the deceased, we are of the opinion that intention to cause death cannot be attributed to the accused though looking to the nature of injury

पीछे देखिये

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मामला क्रमांक CrA 995/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the knowledge that injuries he was causing may result in his death is established.	
11.	In the result the appeal is partly allowed. Conviction under Section 302 of the IPC and the resultant sentence of life imprisonment is set aside, instead the appellant is held guilty for the offence under Section 304-II of the IPC and sentenced to undergo RI for ten years. The appellant is in jail since 26.12.1994 and thus he has completed more than eleven years of jail sentence, it is directed that the appellant be set at liberty if not required in any other case. Sd/- L.C. Bhadoo Judge	Sd/- Dhirendra Mishra Judge

[पीछे देखिये